

AMENDED IN SENATE MAY 25, 2006
AMENDED IN SENATE JANUARY 30, 2006
AMENDED IN SENATE JUNE 23, 2005
AMENDED IN ASSEMBLY MAY 31, 2005
AMENDED IN ASSEMBLY MAY 12, 2005
AMENDED IN ASSEMBLY MAY 10, 2005
AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1316

**Introduced by Assembly Members Salinas and Cohn
(Coauthor: Assembly Member Parra)**

February 22, 2005

An act to amend Section 32128 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, as amended, Salinas. Hospital districts: hospital rules: indemnification.

The existing Local Health Care District Law prescribes procedures for the formation and organization of hospital districts, and specifies the powers and duties of those districts. The law requires that the rules of a hospital, established by the board of directors, include specified provisions pertaining to the operation of the hospital and appointment of hospital medical staff, as provided.

This bill would additionally require that those rules include a provision for indemnification for damages and for costs associated with the legal defense of any nonemployee member of the medical staff when named as a defendant in a civil action directly arising out of opinions rendered, statements made, or actions taken as a necessary part of participation in the medical peer review activities of the district, as specified. *The bill would authorize a district to pay that part of a judgment that is for punitive or exemplary damages against a nonemployee member of the medical staff arising out of participation in peer review activities, if the board of directors of the district, in its discretion, makes specified findings.* By imposing new duties on hospital districts with respect to the implementation of new rules in hospitals, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The participation of nonemployee members of hospital
- 4 medical staff in the medical peer review activities of hospitals is
- 5 critical to preserving the highest standards of hospital medical
- 6 practice and patient care.
- 7 (b) Participation in medical peer review activities exposes
- 8 nonemployee members of the health care district medical staff to
- 9 the risk of involvement in civil actions arising out of those peer
- 10 review activities.
- 11 (c) California hospitals have traditionally provided
- 12 nonemployee physicians, serving as members of hospital peer
- 13 review committees, with indemnification for damages and for

1 costs associated with the legal defense of civil actions arising out
2 of their peer review activities. However, a recent Attorney
3 General’s Opinion calls into question the specific authority of
4 health care districts, pursuant to the local Health Care District
5 Law (Division 23 (commencing with Section 32000) of the
6 Health and Safety Code), to provide this indemnification.

7 (d) The risks and costs of involvement in litigation would
8 make it extremely difficult for health care districts to obtain the
9 participation of nonemployee members of their hospital medical
10 staff in peer review activities. The loss of active peer review
11 bodies would render district hospitals ineligible for certification
12 by the Joint Commission on the Accreditation of Hospitals and
13 Health Care Organizations, threaten district hospitals’ contracts
14 with liability insurance carriers, and their status as Medicare
15 providers, and could potentially invalidate their contracts with
16 numerous health plans.

17 (e) To ensure that nonemployee members of the medical staff
18 will continue to participate in the medical peer review activities
19 of health care districts, it is necessary for districts to provide
20 conditional indemnification for damages and for costs associated
21 with the legal defense of civil actions arising out of participation
22 in those peer review activities.

23 SEC. 2. Section 32128 of the Health and Safety Code is
24 amended to read:

25 32128. (a) The rules of the hospital, established by the board
26 of directors pursuant to this article, shall include all of the
27 following:

28 (1) Provision for the organization of physicians and surgeons,
29 podiatrists, and dentists licensed to practice in this state who are
30 permitted to practice in the hospital into a formal medical staff,
31 with appropriate officers and bylaws and with staff appointments
32 on an annual or biennial basis.

33 (2) Provision for a procedure for appointment and
34 reappointment of medical staff as provided by the standards of
35 the Joint Commission on Accreditation of Healthcare
36 Organizations.

37 (3) Provisions that the medical staff shall be self-governing
38 with respect to the professional work performed in the hospital;
39 that the medical staff shall meet in accordance with the minimum
40 requirements of the Joint Commission on Accreditation of

1 Healthcare Organizations; and that the medical records of the
2 patients shall be the basis for such review and analysis.

3 (4) Provision that accurate and complete medical records be
4 prepared and maintained for all patients.

5 For purposes of this paragraph medical records include, but are
6 not limited to, identification data, personal and family history,
7 history of present illness, physical examination, special
8 examinations, professional or working diagnoses, treatment,
9 gross and microscopic pathological findings, progress notes, final
10 diagnosis, condition on discharge, and other matters as the
11 medical staff shall determine.

12 (5) Limitations with respect to the practice of medicine and
13 surgery in the hospital as the board of directors may find to be in
14 the best interests of the public health and welfare, including
15 appropriate provision for proof of ability to respond in damages
16 by applicants for staff membership, as long as no duly licensed
17 physician and surgeon is excluded from staff membership solely
18 because he or she is licensed by the Osteopathic Medical Board
19 of California.

20 (6) Provision for indemnification for damages and for costs
21 associated with the legal defense of any nonemployee member of
22 the medical staff when named as a defendant in a civil action
23 directly arising out of opinions rendered, statements made, or
24 actions taken as a necessary part of participation in the medical
25 peer review activities of the district. This provision for
26 indemnification for damages shall not include any award of
27 punitive or exemplary damages against any nonemployee
28 member of the medical staff. If the plaintiff prevails in a claim
29 for punitive or exemplary damages against a nonemployee
30 member of the medical staff, the defendant, *at the option of the*
31 *board of directors of the district*, shall be liable to the district for
32 all the costs incurred in providing representation to the
33 defendant.

34 *(b) Notwithstanding subdivision (a) or any other provision of*
35 *law, a district is authorized to pay that part of a judgment that is*
36 *for punitive or exemplary damages against a nonemployee*
37 *member of the medical staff arising out of participation in peer*
38 *review activities, if the board of directors of the district, in its*
39 *discretion, finds all of the following:*

1 (1) *The judgment is based on opinions rendered, statements*
2 *made, or actions taken as a necessary part of participation in the*
3 *medical peer review activities of the district.*

4 (2) *At the time of rendering of the opinions, making the*
5 *statements, or taking the actions giving rise to the liability, the*
6 *nonemployee member of the medical staff was acting in good*
7 *faith, without actual malice, and in the apparent best interests of*
8 *the district.*

9 (3) *Payment of the claim or judgment against the nonemployee*
10 *member staff would be in the best interests of the district.*

11 ~~(b)~~

12 (c) The rules of the hospital shall, insofar as consistent with
13 this article, be in accord with and contain minimum standards not
14 less than the rules and standards of private or voluntary hospitals.
15 Unless specifically prohibited by law, the board of directors may
16 adopt other rules which could be lawfully adopted by private or
17 voluntary hospitals.

18 SEC. 3. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.